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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,169

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Kenji Iwashita

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EXAMINER

SALVATORE, LYNDIA

ART UNIT

PAPER NUMBER

1771

MAIL DATE

DELIVERY MODE

09/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/521,169	Applicant(s) IWASHITA, KENJI	
	Examiner Lynda M. Salvatore	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,7 and 15 is/are rejected.
- 7) ☒ Claim(s) 2-5,8 and 11-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :3/13/07,12/22/06,5/25/07,1/14/05.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment and accompanying remarks filed 7/16/07 have been fully considered and entered. Claims 9-10 have been amended as requested.

Election/Restrictions

2. Applicant's election with traverse of claims 1-8 and 11-15 in the reply filed on 7/16/07 is acknowledged. The traversal is on the ground(s) that amended claims 9 and 10 should be examined with Group I, claims 1-8 and 11-15 since they now depend from claim 1. This is not found persuasive because the article set forth in claim 1 does not define a contribution over the prior art made of record. In addition, claims 9 and 10 contain manipulative method steps, which would require a search that is not coextensive with the search required for the article.

The requirement is still deemed proper and is therefore made FINAL. However, in the event claim 1 is directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims 9-10, directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, will hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Takenaka et al., US 5,021,283.

The patent issued to Takenaka et al., teach a multi-layer non-woven fabric comprising at least three layers of woven fabrics (abstract). With regard to the claimed bonding layer having a corrugated and wave like shape, Takenaka et al., teach combining portions of the internal layers to form cells having a shape of tetragons, hexagons or a combination thereof. It appears that figure 1 illustrates an internal corrugated or wave like shape. With regard to the fiber material, Takenaka et al., teach employing polyester fibers having a single fiber fineness ranging from .1 to 50 and a multifilament fineness ranging from 50-6000 (column 6, 50-column 7, 30). With regard to the composite yarn limitation, mixing organic and inorganic filaments to form multifilaments (column 6, 32-50 and column 7, 30-35).

With regard to the claimed air permeability property set forth in claim 7, the prior art of Takenaka et al., fails to teach the claimed air permeability. However, it is reasonable to presume that said air permeability property is inherent to the invention of Takenaka et al. Support for said presumption is found in the use of like materials such as polyester filaments and the use of like process such as forming a three dimensional multi-layer woven fabric, which would result in the claimed property. The burden is shifted to Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594

In addition, the presently claimed air permeability property would obviously have been present once the Takenaka et al., product is provided. *In re Best*, 195 USPQ 433

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takenaka et al., US 5,021,283 as applied to claim 1 above.

Takenaka et al., does not teach the claimed distance between the hills and valleys of the bonding layer, however, it is the position of the Examiner that it would be obvious to one having ordinary skill in the art to optimize the distance between the hills and valleys as a function of desired loft and three-dimensional properties. It has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215

With regard to the claimed air permeability property set forth in claim 7, the prior art of Takenaka et al., fails to teach the claimed air permeability. However, it is expected that said air permeability property would be exhibited in the three dimensional multi-layer fabric of Takenaka et al. Support for said presumption is found in the use of like materials such as polyester filaments and the use of like process such as forming a three dimensional multi-layer woven fabric, which would result in the claimed property.

Allowable Subject Matter

7. Claims 2-5, 8, 11-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 15th, 2007
/Lynda Salvatore/
Primary Examiner
Art Unit 1771

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